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NEW YORK, NEW YORK 10022
212-935-6020
3 212-753-8101 (TELECOPIER)

4 Attorneys for defendant NWI

5
6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF NEW YORK

8 THE NEW YORK TIMES
COMPANY,

9 Plaintiff,

10 v.

11 NEASI-WEBER INTERNATIONAL
LLC,

12 Defendant.

13 _____
14 NEASI-WEBER INTERNATIONAL
LLC,

15 Counterclaimant,

16 v.

17 THE NEW YORK TIMES
COMPANY, and
INTERNATIONAL HERALD
18 TRIBUNE U.S. INC.,

19 Counterdefendants.
20
21
22
23

Case No. 07-CV-8046 (JFK)

ANSWER AND COUNTERCLAIM

JURY TRIAL DEMANDED

ANSWER

Defendant Neasi-Weber International, LLC ("NWI") answers the complaint of The New York Times Company ("NYTCo.") as follows:

1. This action has been removed, and therefore NWI denies the case arises under state law. NWI does not deny that NYTCo. seeks the remainder of the paragraph.

2, NWI admits that since 1984 it has contracted with NYTCo. for an individual license to utilize NWI's copyrighted ADMARC software system ("System") personal to NYTCo. limited to NYTCo.'s use of the System solely in connection with its publishing business. NWI admits NYTCo. is a New York corporation with its address (as registered with the California Secretary of State) at 229 West 43rd Street, New York, New York 10036. NWI admits International Herald Tribune U.S. Inc. ("IHT") is a New York corporation with its address at 229 West 43rd Street, New York, New York 10036 NWI lacks information or belief regarding the remainder of the paragraph.

3. NWI admits it is a California limited liability company with its principal place of business at 25115 Avenue Stanford, Suite A-300, Valencia, California 91355. NWI admits the remainder of the paragraph.

4. This action has been removed, but NWI admits to jurisdiction in the Southern District of New York.

5. Admit.

6. NWI denies that IHT is a licensee. NWI admits that the contract's terms are as stated in Exhibit 1.

7. NWI admits the contract terms are as stated in Exhibit 1.

8. NWI admits that IHT is not NYTCo. but lacks information or belief to admit or deny the remainder of this paragraph.

9. NWI admits that NYTCo. started using the System for IHT and that use benefitted NYTCo. and IHT, but lacks information or belief to admit or

1 deny the remainder of this paragraph.

2 10. NWI admits that NYTCo. asked NWI to enter into a new license for
3 IHT and NWI in reliance added IHT to the System. NWI denies full payment
4 for these services. NWI otherwise lacks information or belief as to the remain-
der of this paragraph.

5 11. NWI admits NYTCo. solicited an additional license and maintenance
6 agreement to include IHT in the license, and that Exhibit 2 is the negotiated
7 amendment which would have added IHT to the license. NWI denies IHT was
8 allowed to use the System under the contract with NWI, Exhibit 1, and denies
the remainder of the paragraph.

9 12. NWI admits NYTCo.'s in-house counsel tried to argue in Exhibit 3
10 that IHT was its affiliate and not a separate entity and that the single location
11 meant no additional license was required. NWI denies the remainder of the
12 paragraph.

13 13. NWI admits to Exhibit 4 and its contents.

14 14. Nwi admits that NYTCo. in Exhibit 5 admitted IHT was not an
15 affiliate but an entity separate from NYTCo. and that IHT was using the System,
and that the contents of the email are as stated.

16 15. NWI admits the letter from its counsel was sent to NYTCo.'s general
17 counsel and IHT's principal (who also appears to be an officer of NYTCo.) and
18 states the contents of Exhibit 6.

19 16. NWI denies continued negotiations but admits NYTCo. should be
enjoined from continued copyright infringement and breach of contract.

20 17. This paragraph does not require a response.

21 18. NWI denies IHT's use of the System is proper.

22 19. This paragraph does not require a response.

23 20. NWI denies IHT's use of the System is proper.

22. NWI admits the prevailing party is entitled to the contractual

1 remedies.

2 AFFIRMATIVE DEFENSES

3 23. NWI has setoffs and offsets against NYTCo. (see counterclaim
4 *infra*).

5 24. NYTCo. has unclean hands.

6 25. NYTCo. is estopped from denying, and waived any right to deny,
7 the need for a separate license by its agreement to enter into one for IHT's use
8 the System and its resulting inducement to NWI to perform work setting IHT
up on the System while the license was pending signature.

9 COUNTERCLAIM

10 26. Counterclaimant NWI is a California limited liability company with
11 its principal place of business at 25115 Avenue Stanford, Suite A-300, Valencia,
12 California 91355. NWI is the author and owner of integrated advertising,
13 circulation, and insert management software products for newspaper and
magazine publishers and media related industries worldwide.

14 27. Counterdefendant NYTCo. is a New York corporation with its
15 address (as registered with the California Secretary of State) at 229 West 43rd
16 Street, New York, New York 10036. Since 1984 NWI has contracted with
17 NYTCo. to provide an individual license to for NYTCo. to utilize NWI's copyri-
18 ghted ADMARC software system ("System"). A copy of the original license is
attached to the Complaint as Exhibit1. NYTCo. is defined in the license as the
Licensee.

19 28. Counterdefendant IHT is a New York corporation with its address at
20 229 West 43rd Street, New York, New York 10036. IHT does not have a
21 license to use the System and is not an affiliate of NYTCo. a defined in the
22 license at paragraph 6.

23 29. Each counterdefendant was at all relevant times the agent, joint

1 venturer or coconspirator of each other counterdefendant and acting within
2 the purpose and scope of that relationship.

3 30. Original federal question jurisdiction exists over the first count
4 pursuant to 28 U.S.C. § 1338(a) as it arises under copyright laws. Jurisdiction
5 also arises under section 1332 from the complete diversity between
6 counterclaimant and counterdefendants and the amount in controversy, which
7 exceeds \$75,000. Supplemental jurisdiction over the additional counts exists
8 pursuant to 28 U.S.C. § 1367(a) as the federal and state claims are so related
9 that they form part of the same case or controversy.

10 31. Personal jurisdiction and venue are proper in this district pursuant to
11 28 U.S.C. § 1400 as counterdefendants reside and engage in commercial
12 activities here and NYTOo. alleges the contract was performed here.

13 FIRST COUNT

14 (Copyright infringement)

15 32. NWI is the owner of copyright TXu 292 965 for its original software
16 for the System known as ADMARC Release 6 for IBM Mainframe. A copy of
17 the registration is attached as Exhibit A.

18 33. NWI licensed the System to NYTCo. pursuant to the written license
19 agreement attached to the complaint as Exhibit 1. NYTCo. was granted a
20 limited, personal license for it to utilize the System solely in connection with
21 its publishing business. The license provided that affiliates of NYTCo. could
22 utilize the System upon agreement to and payment for a supplemental license.
23 Anyone else using the System required a separate license agreement and
payment therefor. Maintenance agreements also accompany the license
agreements.

34. By September 2006 NYTCo. had requested that IHT be allowed to
utilize the System. Believing IHT to be an affiliate of NYTCo., NWI drafted an

1 addendum to the license and maintenance agreement. NYTCO. negotiated a
2 revision to that addendum changing the payment timing, to which NWI agreed
3 and issued a final license and maintenance agreement for signature (attached
4 to the complaint as Exhibit 2). NYTCO. gave NWI assurances that it under-
5 stood an additional license fee and a new maintenance fee were required to be
6 paid and that it would sign the addendum.

7 35. Relying on NYTCO.'s assurances, NWI commenced installation of
8 the System for IHT's use. In December 2006 NYTCO. signed a services agree-
9 ment that had accompanied the addendum. Meanwhile, NWI asks for the
10 signed addendum and is told the signature is coming.

11 36. NWI commenced invoicing NYTCO. for the services in November
12 2006 through May 2007. In June 2007 NYTCO.'s in-house counsel stated that
13 NYTCO. does not believe it needs a second license as IHT is an affiliate of
14 NYTCO. (Complaint Exhibit 3). NWI responded that the license agreement
15 requires a supplemental license fee be paid if IHT is an affiliate, or if IHT is not
16 an affiliate – which NWI's counsel believed to be the case – then a new license
17 agreement and fee are required. NWI's counsel also demanded that NYTCO.
18 Cease use of the System in violation of the license agreement and cease
19 infringing NWI's copyright. [Complaint Exhibit 4.]

20 37. NYTCO.'s in-house counsel responded that IHT was not an affiliate
21 and yet was using the System without any intention of paying the negotiated
22 license or maintenance fees. [Complaint Exhibit 5.] NWI's counsel made more
23 attempts to gain compliance with the contracts and cease the copyright
infringement by NYTCO. and IHT, e.g., complaint Exhibit 5, and gave a deadline
of 23 August to avoid litigation, but instead of continuing the discussion
NYTCO. filed this action on the deadline in New York state court.

38. Counterdefendants infringed and continue to infringe NWI's copy-

1 right under 17 U.S.C. § 501 by using the System in this manner. NYTCo.'s
2 license was revoked when it allowed IHT to use the System and IHT never had
3 a license.

4 39. Pursuant to 17 U.S.C. §§ 502-505 NWI is entitled to a temporary
5 and permanent injunction against counterdefendants to prevent or restrain
6 infringement of NWI's copyright, an order of turnover of all copies and parts of
7 the System, statutory damages and actual damages, counterdefendants' profits
8 and costs and reasonable attorneys' fees by statute and pursuant to paragraph
9 33 of the license agreement.

10 SECOND COUNT

11 (Breach of contract)

12 40. Counterclaimant incorporates paragraphs 26 through 39 in this
13 count.

14 41. There was a written agreement between NWI and NYTCo., com-
15 plaint Exhibit 1 as amended. There was a written addendum to that agreement
16 between NWI and counterdefendants, complaint Exhibit 2, which NYTCo.
17 promised to execute on behalf of IHT. There was a signed services agreement
18 between Nwi and counterdefendants for the installation of the System for IHT.

19 42. NWI performed all or substantially all of the contracts except as
20 excused. All conditions required for counterdefendants' performance have
21 occurred.

22 43. Counterdefendants have breached the contracts without justification
23 or excuse by failing to pay for the services and NWI's System's license or
maintenance pursuant to the contracts. There currently are four outstanding
invoices not paid, attached as Exhibit B: 15682 for \$7000, 15734 for \$43,750,
15735 for \$73,750 and 15846 for \$47,877.50 for a total owed of \$172,377.50.

44. NWI has been damaged in the sum \$172,377.50 plus attorneys' fees

1 pursuant to paragraph 33 of the original agreement and prejudgment
2 interest from the date of each invoice.

3 THIRD COUNT
4 (Common count)

5 45. Counterclaimant incorporates paragraphs 26 through 44 in this
6 count.

7 46. In 2006 and 2007 NWI performed services for counterdefendants
8 and allowed them to use the System at their request and with their promise to
9 pay the reasonable value of such services and use.

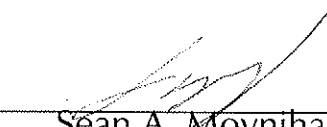
10 47. The reasonable value of NWI's services and the System provided to
11 counterdefendants for which payment has been demanded but not received is
12 \$172,377.50. This sum is now due, owing and unpaid by counterdefendants
13 to NWI plus prejudgment interest and reasonable attorneys' fees pursuant to
14 the contract.

15 PRAYER

16 Neasi-Weber International LLC respectfully requests judgment in its
17 favor and against plaintiff and counterdefendants in all respects; entry of an
18 Order dismissing the complaint; temporary and final injunctive relief
19 preventing counterdefendants from infringing NWI's copyright and ordering
20 turnover of NWI's System; statutory or actual damages and profits of
21 defendants from copyright infringement and compensatory damages for the
22 other counts; prejudgment interest; an award of costs and prevailing party
23 attorneys' fees pursuant to law and paragraph 33 of the contract; and an award
of any other and further relief as the Court may deem just or proper.

Dated: New York, New York
September 17, 2007

KLEIN ZELMAN ROTHERMEL LLP

By 
Sean A. Moynihan (SM 5129)
Attorneys for defendant

DEMAND FOR JURY TRIAL

Defendant demands trial by jury.

Dated: New York, New York

September 17, 2007

KLEIN ZELMAN ROTHERMEL LLP

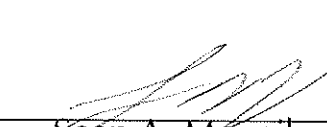
By 
Sean A. Moynihan (SM 5129)
Attorneys for defendant

Exhibit A



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the records.

OCT - 5 1987

Christie, Parker & Hale

REGISTER OF COPYRIGHTS
United States of America

FORM TX

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TXU 292 965

TX
EFFECTIVE DATE OF REGISTRATION

6 11 87
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

(N31:18707/LTY)

ADVARC Release 6 for IBM Mainframe

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

NAME OF AUTHOR

Neasi-Weber International

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of Domiciled in Los Angeles, California

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

New text for I/O module to adapt unpublished ADVARC program for IBM mainframe.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1987

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information Month Day Year

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

NEASI-WEBER INTERNATIONAL

11846 Ventura Boulevard, Suite 200
Studio City, California 91604

APPLICATION RECEIVED
JUN 11 1987

ONE DEPOSIT RECEIVED
JUN 11 1987

TWO DEPOSITS RECEIVED

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

REMITTANCE NUMBER AND DATE

MORE ON BACK

Complete all applicable instructions (numbers 5-11) on the reverse side of this page. See detailed instructions. See the form at line 10.

DO NOT WRITE HERE
Page 1 of 2 Pages

Eph. A

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "author" of that part, and leave the space for dates of birth and death blank.

13984467

EXAMINED BY

FORM TX

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY☐ DEPOSIT ACCOUNT
FUNDS USED

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ☐☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 6 on this application.If your answer is "Yes," give: Previous Registration Number ☐Year of Registration ☐**DERIVATIVE WORK OR COMPILATION** Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ☐b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ☐**MANUFACTURERS AND LOCATIONS** If this is a published work consisting predominantly of nondramatic literary material in English, the law may require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where these processes were performed must be given. See instructions for details.Names of Manufacturers ☐Places of Manufacture ☐**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS**

A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a ☐ Copies and Phonorecordsb ☐ Copies Onlyc ☐ Phonorecords Only**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.Name ☐Account Number ☐**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name / Address / Apt / City / State / Zip ☐

Leo J. Young, Esq.

CHRISTIE, PARKER & HALE

Post Office Box 7068

Pasadena, CA 91109-7068 Area Code & Telephone Number ☐ (818) 795-5843**CERTIFICATION** I, the undersigned, hereby certify that I am theCheck one ☐☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Neasi-Weber InternationalName of author or other copyright claimant, or owner of exclusive right(s) ☐

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ☐ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

DENNIS J. NEASI

Handwritten signature (X) ☐date ☐MAIL
CERTIFI-
CATE TOCertificate
will be
mailed in
window
envelope

Name ☐ Leo J. Young, Esq.
CHRISTIE, PARKER & HALE
Number / Street / Apartment Number ☐
Post Office Box 7068
City / State / Zip ☐
Pasadena, California 91109-7068

Note you:

- Completed all necessary spaces?
- Signed your application in space 10?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
- Enclosed your deposit material with this application and fee?

MAIL TO: Register of Copyrights
Library of Congress, Washington
D.C. 20559

* 17 U.S.C. § 506(a). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by Section 408 or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

U.S. GOVERNMENT PRINTING OFFICE: 1986-491-560/20.015

February 1965-200.000

Exhibit B



Neasi-Weber International
25115 Avenue Stanford, Ste. A-300
Valencia, CA 91355

Invoice

Date	Invoice #
4/26/2007	15682

Bill To

New York Times Company
Mr. Larry Clare - Director
229 West 43rd Street
New York, NY 10036

		P.O. No.	Terms	Due Date
		ADM/L226	Net 30 days	5/26/2007
Description	Quantity	UOM	Rate	Amount
L226: Megacryption work - Final Payment	1	Fee	7,000.00	7,000.00
			Total	\$7,000.00

Exh B



Inesi-Weder International

25115 Avenue Stanford, Ste. A-300
Valencia, CA 91355**Invoice**

Date	Invoice #
5/23/2007	15735

Bill ToNew York Times Company
Mr. Larry Clare - Director
229 West 43rd Street
New York, NY 10036

		P.O. No.	Terms	Due Date
		ADM/SLA	Due on Receipt	5/23/2007
Description	Quantity	UOM	Rate	Amount
ADMARC IHT System License - 50% Due on Go-Live of IHT	1	Fee	43,750.00	43,750.00
ADMARC IHT Annual Maintenance - 100% Due on Go-Live of IHT	1	Fee	30,000.00	30,000.00
See detail attached			Total	\$73,750.00



Neasi-Weber International

25115 Avenue Stanford, Ste. A-300
Valencia, CA 91355**Invoice**

Date	Invoice #
8/17/2007	15846

Bill ToNew York Times Company
Mr. Mike Salzstein
229 West 43rd Street
New York, NY 10036

		P.O. No.	Terms	Due Date
		ADM/MNT	See Due Date	9/16/2007
Description	Quantity	UOM	Rate	Amount
Maintenance Annual Renewal: 10/01/2007 - 9/30/2008	1	Fee	47,877.50	47,877.50
See detail attached			Total	\$47,877.50